5-21-1997 10:09AM

On May 21st I called Bell South on 3 way with my customer in order to make a carrier change from OCI to Amnex 370. Our Bell South representative, Linda, informed us that "effective April 1st, if you do not choose the Bell South preferred carrier, you will be charged $15 per month" for placing another carrier on the payphone. My customer asked her, "per month?", and Linda said "yes, per month." My customer agreed to the carrier change and that she still wanted to put Amnex 370 on the payphone, and Linda gave us an activation date of Friday May 23rd.

Customer: Sal & Judy Impastato
Diana Dyer - bookkeeper
contact # (504) 882-7167
payphone # (504) 882-9443

7

To whom it may concern: 5-21-97

I, Ivy Gordon, called Bell South on May 20, 1997 and spoke to Ms. Gitz with Jerald Williams on the line. We were placing ICLD on the 0+ part of Mr Williams payphone.
At the end of the ~~[illegible]~~ conversation Ms. Gitz told Mr Williams a rep. from his area would call him in 3 days to confirm the order & would then give an activation date. I asked her what she meant by C/B I never heard of that. She (Ms. Gitz) stated I can not talk to you Ivy, just the customer. She never even explained she just said thanks & hung up.

[redacted] Ivy Gordon
[redacted] 275-5031
Rep- Mrs Gitz (Bell South

[redacted]

803-275-9112

# AFFIDAVIT

I, Sandy Sage do hereby state and affirm the following:
I am an independent representative for National Operator Services, Inc. My job is to contact businesses that have public payphones and offer them an alternative operator service. When the customer selects one of the carriers I can offer I conference in the servicing Bell Company. With the customer and Bell company representative on the phone call a change of carrier is requested. At this point the Bell company honors the customers request and the representative gives the customer an activation date. The call is then terminated.

Recently, Bell South has prevented several of my customers from selecting a long distance carrier of their choice. On one such occasion, I contacted Bell South with James Oldham, a business owner, on the conference call. Prior to calling Bell South Mr. Oldham agreed to use our operator service for his public payphone. A very rude Bell South representative named Mrs. Bagley answered the call. While answering Mrs. Bagleys questions, Mr. Oldham had trouble remembering the carrier identification code (CIC) # for the carrier he had selected. He new the carrier but could not recall the 3 digit CIC. Mr. Oldham asked for my assistance. Mrs. Bagley interrupted and said that only the customer was allowed to speak. When I responded to Mrs. Bagley that the customer was asking for some help she hung up on the customer and me.

Mr. Oldham and I called Bell South again. This time a Mrs. Stevenson was the Bell South Representative. Mrs. Stevenson said the Bell South marketing department would have to call Mr. Oldham with out me on the line. Mrs. Stevenson a record change had to be done by the marketing department since Mr. Oldham was a new customer of record. I asked Mrs. Stevenson if the reason for this private call was to offer Mr. Oldham the Bell South preferred carrier, Teletrust ? She admitted yes. I explained (and Mr. Oldham explained) to Mrs. Stevenson that the request was for carrier ICG CIC 513 not Teletrust. She said maybe this would happen but the marketing department will speak to Mr. Oldham about Teletrust privately when they call to do a change of record.

The foregoing is true to the best of my knowledge, information and belief.

Sandy Sage

Ms. Sandy Sage

Subscriber and sworn to before me this 5 day of September 9, 1997.

My commission expires:
SEAL

9/5/97

Notary Public

1/10/99

Exhibit E

**HELEIN & ASSOCIATES, P. C.**

ATTORNEYS AT LAW

8180 GREENSBORO DRIVE
SUITE 700
MCLEAN, VA 22102

(703) 714-1300 (TELEPHONE)
(703) 714-1330 (FACSIMILE)

WRITER'S DIRECT DIAL NUMBER:
(703) 714-1301

July 30, 1997

Federal Communications Commission
Common Carrier Bureau
Enforcement Division
Enforcement Task Force
2025 M Street, N.W.
Washington, D.C. 20554

***Re: Action Required on Payphone Competition – Regional Bell Operating Companies***

Ladies & Gentlemen:

This firm represents independent payphone service providers ("IPSP") which are confronting strong-arm tactics from the Regional Bell Operating Companies ("RBOCs") in their efforts to enter into the provisioning of payphone services to location providers ("customer(s)").

The tactics being used by RBOCs such as Ameritech and BellSouth are as follows.

**BellSouth.** BellSouth requires customers to use the long distance carrier (Teltrust) BellSouth selected to carry all long distance traffic from the public payphones on the customer's premises and imposing a monthly untariffed charge of $15 if the customer refuses to select Teltrust. This practice was confirmed by the BellSouth public payphones supervisor. This person confirmed that BellSouth has mailed letters to all BellSouth payphone locations in nine states announcing that Teltrust has been selected as BellSouth's PIC. This letter further advises that if end users also select Teltrust, there will no extra charge assessed; but, if a PIC other than Teltrust is chosen, a $15 monthly charge is assessed. In addition, the BellSouth payphone supervisor confirmed that BellSouth pays no commissions to payphone locations who have Teltrust as their PIC.

For semi-public phones, BellSouth follows the same policy. For example, an RV Park operator in Georgia pays a tariffed $35 per month charge to maintain a semi-public payphone for campers, visitors and business use, as necessary. When the camp operator didn't change to Teltrust, the monthly bill from BellSouth increased to $50.

BellSouth also uses marketing materials to create the false impression that customers are required by law (the 1996 Act) to reevaluate their long distance PIC and that BellSouth controls the entities that may provide local and long distance services to the customer.

BellSouth uses prepared forms and correspondence which leverages BellSouth's status as the local exchange carrier to conceal the fact that BellSouth is actually soliciting the customer to make changes in its authorized agency for purposes of choosing a long distance carrier.

Specific instances of other BellSouth improper tactics about which empirical data has been developed include, but are not limited to, the following:

While discussing a change in the PIC for two payphones for an oil company operation in a three-way conference call among BellSouth, an IPSP and the end user, BellSouth's representative first agreed to the change to a PIC other than Teltrust, then recanted to "check with her marketing department." The end user was told to expect a call in two days from BellSouth's marketing department and the conversation ended without BellSouth implementing the end user's PIC selection.

A business in Marathon, Florida was slammed. Abruptly, payphones at this location stopped showing any traffic under the existing IPSP serving this location. This occurred after a site visit by a BellSouth representative who also informed the end user that if Teltrust was not selected as the PIC, BellSouth would remove its payphones from the premises.

**Ameritech.** Ameritech's marketing tactics vary from those of BellSouth, but have the same purpose, to gain unfair competitive advantage over IPSPs.

Ameritech uses a form Letter of Agency appointing Ameritech as the customer's agent to coordinate all payphone activities. In addition, the LOA contains language which directs the customer's independent PIC to turn over to Ameritech all of that PIC's contractual information with that customer. The LOA contains a clause that if the PIC fails to respond and provide the information within seven days of the LOA's execution, it is deemed that no contract exists with the PIC, the contract has expired or that the PIC has abandoned its rights. Another clause serves notice that the customer is not renewing its contract with its PIC and authorizes Ameritech to change its PIC immediately.

Customers are unaware of the legal import of signing this LOA. This is evident from the cavalier disregard for the factual reality of the status of any PIC contractual arrangements which the LOA purports to supersede. No PIC contract or tariff contains provisions permitting it to be interpreted by a non-party whose interests are adverse to the contracting parties, much less that the non-party may interpret that contract as being non-existent, expired or abandoned because of a condition (failure to respond within seven days) created by the non-party to effect its own ends.

Ameritech's LOA should be held to constitute improper interference with existing IPSP customer contracts and, hence, clearly illegal under FCC policies and requirements.

For new IPSP customers, Ameritech engages in a different tactic, one contradictory to the tactic used against an IPSP's existing customers. First, it is necessary to understand that, at present, Ameritech has contracted with LDDS WorldCom ("LDDS") to be Ameritech's chosen long distance PIC for Ameritech-provided payphone service. Customers are then subjected to a deliberate tie-in arrangement of Ameritech.

When a customer signs the contract with Ameritech to place payphones on that provider's premises, the customer is either made to select, or construed by Ameritech to have chosen, LDDS as its long distance PIC for its payphones, According to an Ameritech spokeswoman in Evansville, Indiana, Lisa [no last name provided], the customer "signs" a contract selecting LDDS as the PIC. Once "signed up" however, the customer is not permitted by Ameritech to change that PIC.

In another case, a customer in the hospitality industry was marketed by an IPSP agent. In a conference call with the agent and Ameritech, the customer told Ameritech it had selected a PIC other than LDDS. Ameritech's representative, Ruth [no last name given], advised that the customer "had already selected Ameritech." LDDS was not even mentioned. Having made such "selection," the customer was not permitted to change its PIC. Ruth then stated- - "Debbie [IPSP agent], you can't change his 0+. Ameritech is the only one who can offer this." The Ameritech representative went on to inform both the IPSP agent and the customer that Ameritech was handling the long distance service from here on out.

In still another case, LDDS faxed the IPSP requesting the existing contract between the IPSP and the customer. LDDS claimed that the customer had requested that Ameritech provide the long distance to the payphones of the customer.

LDDS knew this customer was this particular IPSP's from LDDS' own database. In effect, Ameritech started out acting as an agent and submits a request to LDDS to change the customer's long distance service over. LDDS has the customer in its database as the IPSP's customer. LDDS then sends out a fax and provides the IPSP with 5 days in which to send the IPSP's contract with the customer to LDDS, or it will switch the customer to Ameritech.

The IPSP investigated the matter. It determined that the customer had never been contacted by Ameritech or LDDS, and never signed any document or form to change his PIC. He also stated that he controlled the selection of the PIC. In short, an attempted incidence of "slamming" was involved.

The IPSP then contacted its own LDDS rep and related the foregoing events and requested to see Ameritech's contract with the customer. LDDS' IPSP rep eventually got back and reported the following. The rep requested the contact person's name for the customer and when told, admitted that was not the name of the person who allegedly authorized a switch to Ameritech. The person who alledgely was involved was not the customer representative who has authority to make such a decision.

Adding further to the concerns, Ameritech's policy, consistently applied over the past two to three years, contradicts its current tactics. Ameritech's past practice has been not to accept written contracts to change PICs; insisting instead on hearing directly from the customer by telephone.

Today when Ameritech's preferred telephonic communications procedure is followed, the results are quite different. For example, recently (July 15, 1997), the IPSP agent arranged a three-way conference call with the customer, herself and Ameritech. The Ameritech representative, Sharon [no last name given], listened politely to all the information being provided to change the customer's PIC, then informed the IPSP and customer, that the customer records would need to be checked, placed the parties on hold, but never came back on line. This was the second such episode on that same day.

In another incidence, Ameritech's "Sharon" inquired of the customer on-line if he was a new owner because the account ID number did not match with her records. At that point, Sharon abruptly stated that Ameritech would send the customer a contract for long distance and that Ameritech would be handling the long distance and hung up the phone.

Another customer's request to PIC the IPSP during a three-way conference call was denied. on the basis that the Federal tax ID number was said by Ameritech's "Sharon" to be incorrect. The customer's Federal tax ID number was not incorrect.

Another agent of Ameritech, Carol [no last name given], also requested the Federal tax ID number of a customer during a three-way conference call to order service. The customer took a moment and retrieved the number, but when it was provided, Carol stated -- "I noticed that you have Ameritech on the [pay]phone, I can't make the change [the customer was requesting]." Carol then simply said "Good-Bye" and hung up the phone. Later, a test call was placed and it was determined that the payphone had been previously presubscribed to an LDDS affiliate. Hence, what Carol meant when she said that this customer was on Ameritech, is that having formerly presubscribed to LDDS, Ameritech would not accept the change in this customer's PIC.

LDDS/Worldcom's role in all this was explained in part by representatives of LDDS as follows. LDDS takes the position that Ameritech's payphones are COCOTS and that LDDS representatives hold LDDS out to the public as a "regulated COCOT vendor."

LDDS is informed that Ameritech is using three methods to sign payphone location providers to Ameritech/LDDS interLATA service -- on-site sales calls; telemarketing and bundling a service request in Ameritech's payphone installation contracts at the time of their execution. LDDS representatives claimed, however, not to have seen these contracts and also to be unaware that Ameritech tells customers that if they select LDDS through Ameritech, the customer will not be permitted to change PICs in the future.

Ameritech's payphone operations are headquartered in Evansville, Indiana, and are apparently headed up by Marcus Boyd. A telephone conversation with Mr. Boyd provided the following information.

Ameritech has approximately 230,000 payphones it owns in its five-state territory. It employs 50-60 Account Executives ("AEs") who make on-site visits to place Ameritech phones on premises and arrange for commissions on the coin traffic generated. Using a list of expired site contracts, AEs are to re-sign these location providers to new contracts with standard three to five year terms, although, a one year term may be made available.

All new payphones installed must take LDDS as the PIC, the customer is denied, indeed is given no opportunity to exercise, any discretion in the selection of the PIC. Nor at this time is the customer informed that the PIC may never be changed so long as the Ameritech payphone is installed on the premises. If the customer happens to make inquiry about the PIC, he/she may then be told that LDDS must be selected and that no change in LDDS as the PIC will be allowed as long as Ameritech's payphones are installed on the premises.

Ameritech's installation contract is one page in length, covering placement of the phone, and provisioning of intrastate and interstate traffic, with a specific reference to providing interLATA traffic originating from the payphone(s).

The contract does not name the interLATA carrier, that is, does not identify or even mention LDDS as the PIC for the phone under the contract. This omission is deliberate and explained as follows. Ameritech is "positioning themselves [sic] to be the long distance carrier" on the payphone after Ameritech gains the right to enter the interLATA market for long distance.

Although admitting that the AEs probably should disclose LDDS as the PIC, the AE s "are having a problem with this." In fact, the AEs avoid mentioning that the PIC for the payphone in question is being switched to LDDS, so customers have no idea that LDDS will be their phone's PIC.

When the contract is turned in by an AE, no verification of the customer's knowledge or selection of LDDS is made or attempted. No other checks are run to verify customer service needs or selections. No check is made whether the AE spoke with the authorized representative of the customer. No check is made whether the contract and all its terms were discussed with the customer. No mention is made that the PIC is being changed or that the customer has forfeited any rights to make a change in the future (a restriction enforced with the threat that Ameritech will remove its phones if a change is attempted). Although Ameritech receives hundreds of these contracts a day, no checks on proper signatures or knowledgeable execution are made.

Mr. Boyd admitted that an AE can get anyone to sign the contract and there is a recognized probability that the premises owner will have no knowledge of what has transpired. While there appears to be a limited recognition that these procedures, or lack thereof, are not proper, rather than institute corrective measures, the problem is passed off as being one of sloppy work on the part of the AEs -- "AEs are not the best with details or paper work."

In almost all cases, location providers will obtain a better commission rate from IPSPs than from Ameritech/LDDS. However, given Ameritech's tactics, not only is this fact unavailable to customers, but its advantage is denied by the coercive methods used requiring selection of LDDS and Ameritech.

The concern about the coercive tactics, misinformation and misrepresentation takes on added dimension for the smallest location providers. Here, Ameritech employs the United States mail to effect its scheme. For one payphone site, with low volume, Ameritech mails the contract to the customer. If the contract is not returned, no commissions at all are paid until they sign the contract. The mailing of the contract provides no information that explains the PIC change being demanded. or the consequences of doing so.

Ameritech has generated its own LOA form. Ameritech claims this form provides it with the right to act as go-between for the customer by requesting a signed contract from any carrier serving the payphone at that time. Ameritech is seeking to obtain the PIC's contract with the customer in order to obtain the contract's start date, expiration date and a signature. Ameritech has been told by AT&T that its contracts with its payphone customers are none of Ameritech's business and has rejected the LOA as invalid and of no effect.

The foregoing episodes present a serious anticompetitive, consumer fraud, slamming and misuse of the mails, scenario which warrants immediate and effective regulatory intervention and cure. On a broader basis, it clearly shows that, permitted their freedom to "compete" in hitherto closed markets, the RBOCs' monopoly cultures will rule and control management decisions, resulting in abusive tactics designed to ensure continued dominance over telecommunications services in the RBOCs' operating territories.

Even more chilling to the prospects of success for the immense efforts at both the federal and state levels to replace traditional regulation with open competition, is the message being signaled here. If the RBOCs will stoop to such low tactics in connection with a small niche market of long distance services via payphones, what they will attempt in regard to the main market for general long distance services will be as bad or worse.

Supportive documentation and affidavits are available. It is requested that a meeting be arranged to discuss what action and procedures should be considered to address the concerns raised herein.

Respectfully submitted,

Charles H. Helein
Counsel for the
IPSP Ad Hoc Committee
For Consumer Choice

smh\530\taskforc.ltr

Exhibit F

**EXHIBIT F**

The following is a listing of the Attorneys General's Offices in the BellSouth states. A copy of a letter send to the Florida Attorney General's Office is also attached hereto and is representative of the letters sent to each of the following states' Attorneys General.

Alan Hirsch, Esq.
Special Deputy Attorney General
State of North Carolina
Office of the Attorney General
P.O. Box 629
Raleigh, North Carolina 27602-0629

Treva Ashworth, Esq.
Deputy Attorney General
State of South Carolina
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211

Alan Gantzhorn, Esq.
Assistant Attorney General
State of Georgia
Office of the Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300

Les Garringer, Esq.
Assistant Deputy Attorney General
State of Florida
Office of the Attorney General
The Capitol
Tallahassee, Florida 32399-1050

Dennis Wright, Esq.
Assistant Attorney General
State of Alabama
Office of the Attorney General
State House
Montgomery, Alabama 36130

Leyser Morris, Esq.
Director of Consumer Affairs
State of Mississippi
Office of the Attorney General
P.O. Box 220
Jackson, Mississippi 39205-0136

Cynthia Carter, Esq.
Deputy Attorney General
State of Tennessee
Office of the Attorney General
500 Charlotte Avenue
Nashville, Tennessee 37243

Todd Leatherman, Esq.
Director of Consumer Protection Division
State of Kentucky
Office of the Attorney General
P.O. Box 2000
Frankfort, Kentucky 40602-2000

Ezabel Wingerter, Esq.
Consumer Protection Chief
State of Louisiana
Office of the Attorney General
P.O. Box 94005
Baton Rouge, Louisiana 70804-9005

FILE COPY

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ATTORNEYS AT LAW

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MCLEAN, VA 22102

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(703) 714-1330 (FACSIMILE)

WRITER'S DIRECT DIAL NUMBER:
(703) 714-1301

August 4, 1997

Les Garringer, Esq.
Assistant Deputy Attorney General
State of Florida
Office of the Attorney General
The Capitol
Tallahassee, Florida 32399-1050

*Re: Action Required on Payphone Competition -- Regional Bell Operating Companies*

Dear Mr. Garringer:

As your office pursues consumer complaints involving telecommunications services and is charged to protect consumers from deceptive practices, you are respectfully advised of the following circumstances.

This firm represents independent payphone service providers ("IPSP") which are confronting strong-arm tactics from the Regional Bell Operating Company, BellSouth, in their efforts to enter into the provisioning of payphone services to location providers ("customer(s)"). While the following facts support claims sounding in unfair competition and abusive competitive tactics against our clients, such claims are not the focus of this letter. Rather, we request that your offices consider the impact of these practices on the "consumer" -- in this instance, the convenience store, gas station, drug store, church, hospital, etc. These consumers are effectively being denied their rights to choose a long distance carrier; in some cases are being slammed; are being subjected to misrepresentations about the identity of the actual long distance carrier providing service; are having their contractual rights overridden; and are being subjected to monetary penalties arbitrarily imposed without any legal basis.

The tactics being used by BellSouth are as follows.

BellSouth requires customers to use the long distance carrier (Teltrust) BellSouth selected to carry all long distance traffic from the public payphones on the customer's premises and imposing a monthly untariffed charge of $15 if the customer refuses to select Teltrust. This practice was confirmed by the BellSouth public payphones supervisor. This person confirmed that BellSouth has mailed letters to all BellSouth payphone locations in nine states announcing that Teltrust has been selected as BellSouth's PIC. This letter further advises that if end users also select Teltrust, there will no extra charge assessed; but, if a PIC other than Teltrust is chosen, a $15 monthly charge is assessed. In addition, the BellSouth payphone supervisor confirmed that BellSouth pays no commissions to payphone locations who have Teltrust as their PIC.

For semi-public phones, BellSouth follows the same policy. For example, an RV Park operator in Georgia pays a tariffed $35 per month charge to maintain a semi-public payphone for campers, visitors and business use, as necessary. When the camp operator didn't change to Teltrust, the monthly bill from BellSouth increased to $50.

BellSouth also uses marketing materials to create the false impression that customers are required by law (the 1996 Act) to reevaluate their long distance PIC and that BellSouth controls the entities that may provide local and long distance services to the customer.

BellSouth uses prepared forms and correspondence which leverages BellSouth's status as the local exchange carrier to conceal the fact that BellSouth is actually soliciting the customer to make changes in its authorized agency for purposes of choosing a long distance carrier.

Specific instances of other BellSouth improper tactics about which empirical data has been developed include, but are not limited to, the following:

While discussing a change in the PIC for two payphones for an oil company operation in a three-way conference call among BellSouth, an IPSP and the end user, BellSouth's representative first agreed to the change to a PIC other than Teltrust, then recanted to "check with her marketing department." The end user was told to expect a call in two days from BellSouth's marketing department and the conversation ended without BellSouth implementing the end user's PIC selection.

A business in Marathon, Florida was slammed. Abruptly, payphones at this location stopped showing any traffic under the existing IPSP serving this location. This occurred after a site visit by a BellSouth representative who also informed the end user that if Teltrust was not selected as the PIC, BellSouth would remove its payphones from the premises.

The foregoing episodes present a serious anticompetitive, consumer fraud, slamming and misuse of the mails scenario which would seem to warrant immediate and effective intervention and cure. On a broader basis, it clearly shows that, permitted their freedom to "compete" in hitherto closed markets, the monopoly culture will rule and control management decisions, resulting in abusive tactics designed to ensure continued dominance over consumers in BellSouth's operating territories.

Supportive documentation and affidavits are available. Please let us know if we can be of any further assistance in determining whether the facts related herein warrant investigation by your office.

Respectfully submitted,

Charles H. Helein
Counsel for the
IPSP Ad Hoc Committee
For Consumer Choice

smh\530\fl-ag.ltr

Exhibit G

Susan

Gail F. Barber
General Attorney

BellSouth Telecommunications, Inc.
LEGAL DEPARTMENT
2nd Floor
75 Bagby Drive
Homewood, AL 35209
Telephone: 205-943-2860
Facsimile: 205-943-2884

September 9, 1997

SEP 10 10 00 AM '97

OFFICE

William F. Caton
Acting Secretary
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

Re: July 30, 1997, Letter from Helein & Associates, P.C.
Entitled "Action Required on Payphone Competition - Regional Bell Operating Companies"

Dear Mr. Caton:

BellSouth Public Communications, Inc. (BSPC), the structurally separate payphone service provider affiliate of BellSouth Telecommunications, Inc. (BST), by counsel, responds to the referenced letter addressed to the Enforcement Task Force. The referenced letter purports to be submitted to the Task Force on behalf of certain unnamed "independent payphone service providers," belonging to the "IPSP Ad Hoc Committee for Consumer Choice" (IPSP). The IPSP letter, which complains of alleged "strong-arm tactics" by both BellSouth and Ameritech, is riddled with misstatements, half-truths and vague allegations. Indeed, nowhere in the letter are the actual principals of the "Ad Hoc Committee" identified, nor is it clear which segment of the industry the "Ad Hoc Committee" represents.

As more specifically set out below, BellSouth vigorously denies any wrongdoing and asserts that it is in full compliance with § 276 of the Telecommunications Act and the FCC orders relating thereto.[1]

First, the IPSP letter claims that "BellSouth requires customers to use the long distance carrier (Teltrust) BellSouth selected"; that BellSouth imposes a $15 charge if

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[1] First Report and Order, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 20541 (1996)("Report and Order"), Order on Reconsideration, 11 FCC Rcd 21233 (1996), remanded in part and vacated in part, Illinois Pub. Telecom. Ass'n v. FCC, No. 96-1394 (D.C.Cir. July 1, 1997) (both orders together "Payphone Reclassification Proceeding").

customers refuse to use Teltrust, and that BellSouth does not pay commissions where Teltrust has been selected as the presubscribed interexchange carrier (PIC). This allegation is untrue. BellSouth does not require its customers (location providers) to select any particular carrier for payphone service. Since April 16, 1997 (the date BST's CEI plan was approved, pursuant to the Commission's orders implementing Section 276), BSPC has solicited location providers to permit BSPC to select and contract with a preferred IXC on the location provider's behalf. Teltrust is BSPC's preferred carrier at this time. No charge is made to the location provider for placement of public telephones, whether or not Teltrust is selected by the location provider as the PIC. The payment of commissions to a location provider is a matter of contract and is based on a number of business factors, including the economic impact to BSPC of the PIC selection.

The IPSP letter makes the same allegations with regard to "semi-public phones." BSPC has no semi-public telephones. Since the Congressionally mandated deregulation of the payphone industry, BST no longer offers a tariffed semi-public telephone service. BSPC does offer a deregulated, detariffed service marketed as "Business Payphone Service." This service provides payphone service for a monthly maintenance fee at locations where there is insufficient traffic to support a competitive payphone. Many of the location providers who formerly subscribed to BST's semi-public payphone service now contract with BSPC for Business Payphone Service.

The common denominator among these "business payphones"--like their predecessors, semi-public payphones--is that they generate insufficient traffic to cover their costs through local usage and service fees. Recent regulatory reforms, and particularly Congress's mandate that there be no subsidization of local exchange carrier (LEC) payphone service from local exchange and exchange access service revenues, necessitated the removal of semi-public payphone lines from BST's tariffs. Rather than removing these phones entirely,[2] however, BSPC has attempted to continue to service this niche market by providing location providers with Business Payphone Service. BSPC initially anticipated that, when authorized to do so, it would be able to make up the shortfall between its costs, including the rates it pays BST at arms length for a basic payphone line, and the Business Payphone Service monthly maintenance fee by negotiating with an IXC to carry the interLATA traffic from the Business Payphones. But where the location provider chooses to select an interexchange carrier itself, BSPC is unable to make up the shortfall. BSPC thus decided to offer its Business Payphone Service on a two-tier

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[2] Other IPSPs simply "will not install payphones in locations that do not generate substantial numbers of coin calls." *Remand Issues Involved with the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Comments of Peoples Telephone Company, Inc. at 6 (Aug. 26, 1997).

basis and to charge a monthly fee of $15 to location providers who elected not to appoint, or were precluded by contract from appointing, BSPC as their agent for the purpose of selecting the PIC.

Location providers who have their own arrangement with an IXC have the opportunity to make up the $15 (and more) in commissions received from the IXC. (The location provider also could negotiate to obtain a payphone from a competitive payphone provider.) There is no reason why BSPC should subsidize the receipt of such commissions by supplying the location provider with a payphone that does not recover its costs. If BSPC will not receive a commission from the interexchange carrier, it must recoup those lost revenues directly from the location provider.

BSPC could have achieved exactly the same economic result by providing Business Payphone Service for $15 more and offering a $15 discount to customers who selected BSPC as their agent. Such a fee structure would have clearly passed muster under the <u>Payphone Reclassification Proceeding</u>, which contemplated that Bell Company payphone service providers such as BSPC would pay commissions to location providers. <u>See</u> <u>Report and Order</u> at ¶¶ 238-241. Since there is no substantive difference between these two fee structures, there is no basis for a claim that the $15 fee is an unjust and unreasonable practice.

With respect to the claim regarding an unnamed RV Park operator in Georgia, BSPC does not have sufficient information, without the telephone number of the station in question, to respond to the allegation. It is unknown whether this is regular public telephone service or Business Payphone Service. Without knowing the specifics, BSPC is unable to verify these rates.

IPSP has also made vague references to BSPC's marketing materials as being improper. BSPC vigorously denies that its marketing materials create a false impression that customers are required by law to reevaluate their PIC. Since the IPSP letter does not provide any specific information regarding the marketing materials in question, it is impossible for BSPC to respond to this statement in detail. It is equally impossible to respond to an allegation that BellSouth's correspondence conceals that it is soliciting a change in a PIC without any specific information. As the Commission explained in its payphone orders, Section 276 of the 1996 Telecommunications Act granted Bell Company payphone service providers "the right to participate as a contractual intermediary between a location provider and a third-party interLATA carrier." <u>Report and Order</u> at ¶ 243. BSPC contractual and publicity materials comport with both the spirit and the letter of the <u>Payphone Reclassifcation Proceeding</u>.

With regard to the "specifics" to which IPSP does refer, IPSP once again omits any specific identifying information that would enable BSPC to investigate the claims. The IPSP letter refers to a discussion regarding a PIC change, but does not say that the phones were BellSouth payphones. BSPC's policy with respect to PIC selection, as stated earlier, fully comports with the letter and the spirit of the Payphone Reclassification Proceeding. It is unclear to whom the line was PIC'd at the time of the call. It is also unclear whether the call was to BST's office or BSPC's. If the call was from an IPSP, there is no reason for an independent payphone provider to call BSPC since it would be a competitor to BSPC, and BSPC would be unable to change the PIC on a competitor's phone. Once again IPSP's reference is so vague that it is impossible to respond.

With the second "specific" complaint regarding a Marathon, Florida business, it is again not clear how BSPC could deal with a competing IPSP. In any event, it is not BSPC's policy to remove payphones from premises based solely on the selection of the PIC carrier but to make a business decision, as any IPSP would, based on a number of relevant factors as to whether it is in BSPC's interest as a payphone service provider to provide a payphone at a particular location. Neither is it BellSouth's policy to change the PIC without the authorization of the location provider.

If counsel for the IPSP Ad Hoc Committee were to forward to me the "[s]upportive documentation and affidavits" which he states "are available," but which have not been provided to either BellSouth or the Commission, BSPC would be able to investigate any actual event that may have occurred.

Very truly yours,

Gail L. Bailey /RKH

cc: Enforcement Task Force:
Susan Fox, Interim Chair, Office of General Counsel
Barbara Esbin, Assoc. Bureau Chief, Cable Services Bureau
Mary Beth Richards, Deputy Bureau Chief, Common Carrier Bureau
John Muleta, Deputy Bureau Chief, Common Carrier Bureau
Jeanine Poltronieri, Assoc. Bureau Chief, Wireless Telecommunications Bureau
Alan Baker, Ameritech
Michael Johnson, Ameritech
M. Robert Sutherland
Theodore R. Kingsley
Gregory D. Artis
James B. Hawkins

Exhibit H

# facsimile transmission

Office of General Counsel

Washington, D. C. 20554

To: Helein

Phone Number: 703-714-1301

FAX Number: 703-714-1330

From: Susan Fox

Phone Number: (202) 418-1700

FAX Number: (202) 418-2822

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Message:

Exhibit I